

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #2	CCRB Case #: 201504430	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2015 8:30 PM	Location of Incident: 147th Street and St. Nicholas Avenue and the 30th Precinct stationhouse	Precinct: 30	18 Mo. SOL 11/29/2016	EO SOL 11/29/2016	
Date/Time CV Reported Sun, 05/31/2015 1:26 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 05/31/2015 1:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Cacciatore	09464	948729	030 PCT
2. POM Joby Thomas	14581	951332	030 PCT
3. SGT Daniel Gagliardi	4438	941785	030 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Patrick Harrington	01234	917738	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joby Thomas	Force: In the vicinity of West 147th Street and St. Nicholas Avenue in Manhattan, PO Joby Thomas used physical force against § 87(2)(b)	
B.POM Andrew Cacciatore	Force: In the vicinity of West 147th Street and St. Nicholas Avenue in Manhattan, PO Andrew Cacciatore used physical force against § 87(2)(b)	
C.SGT Daniel Gagliardi	Discourtesy: At the 30th Precinct stationhouse, Sgt. Daniel Gagliardi spoke rudely to § 87(2)(b)	

Case Summary

On May 29, 2015, at 8:30 p.m., § 87(2)(b) was walking north on St. Nicholas Avenue towards the intersection of 147th Street in Manhattan and listening to music that was playing out of a speaker strapped to his shoulder bag. At this time, PO Andrew Cacciatore and PO Joby Thomas of the 30th Precinct stationhouse pulled up alongside § 87(2)(b) in a marked RMP and told him that his music was too loud. § 87(2)(b) objected and stated that his music was not too loud. The officers exited their vehicle and asked § 87(2)(b) for identification, which he refused to provide.

PO Thomas allegedly grabbed § 87(2)(b) by his hair and pulled him towards the ground (**Allegation A**). PO Cacciatore grabbed ahold of § 87(2)(b) and pulled him down towards the ground, causing him to fall on his camera and resulting in lacerations to his right hand, arm and shoulder (**Allegation B**). § 87(2)(b) was taken to the 30th Precinct stationhouse where he demanded that he be brought to § 87(2)(b). Sgt. Gagliardi allegedly replied by saying, "Get the fuck out of here," to § 87(2)(b) (**Allegation C**). § 87(2)(b) was charged with § 87(2)(b). § 87(2)(b) was issued a summons for § 87(2)(b) (encl. Board Review 01-03).

Mediation, Civil and Criminal Histories

This case was not suitable for mediation. § 87(2)(b) stated during his interview that he intended on filing a Notice of Claim with the City of New York. The New York City Office of the Comptroller has returned a request for confirmation with negative results (encl. Board Review 04). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- PO Thomas has no prior CCRB allegations (encl. Board Review 06).
- PO Cacciatore has no prior CCRB allegations (encl. Board Review 07).
- Sgt. Gagliardi has had 23 prior CCRB allegations involving 11 cases and no substantiated allegations against him (encl. Board Review 08).
- This is the first CCRB complaint filed by § 87(2)(b) (encl. Board Review 09).

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g) [redacted]
- § 87(2)(g) [redacted]

Explanation of Subject Officer Identification

§ 87(2)(b) insisted that the officer who said, "Get the fuck out of here," was a desk sergeant, who he described as a white male in his late-thirties with a bald head. § 87(2)(b) believed this

officer was the desk sergeant because he was sitting behind the front desk at the time. The desk sergeant at the time of the incident, Sgt. Patrick Harrington, a white male in his late-forties with short gray hair, had no recollection of the incident (encl. Board Review 10). Sgt. Gagliardi, who is a white male in his early-thirties with a bald head and familiarity with the incident, had no recollection of being at the stationhouse at the same time as § 87(2)(b) (encl. Board Review 11).

§ 87(2)(g)

Allegation A – Force: In the vicinity of West 147th Street and St. Nicholas Avenue in Manhattan, PO Joby Thomas used physical force against § 87(2)(b)

Allegation B – Force: In the vicinity of West 147th Street and St. Nicholas Avenue in Manhattan, PO Andrew Cacciatore used physical force against § 87(2)(b)

It is undisputed that PO Thomas and PO Cacciatore employed the use of force while detaining § 87(2)(b) and bringing him into custody.

§ 87(2)(b) alleged that PO Thomas and Cacciatore grabbed him from either side of his body and attempted to pull him forwards towards the ground. § 87(2)(b) stated that PO Thomas held him by his hair at one point while pulled him towards the ground. § 87(2)(b) stated that he was non-compliant with officer's requests to provide identification prior to his detainment and that he was physically resistant to being brought to the ground because he feared damage to his camera, which was around his neck. § 87(2)(b) stated that he sustained abrasions to his right hand and arms when he was brought to the ground.

PO Thomas confirmed that § 87(2)(b) needed to be forcefully brought to the ground after he refused to provide identification and tightened his body to resist being placed in handcuffs. PO Thomas stated that he had attempted to bring § 87(2)(b) to the ground in a controlled maneuver but lost his balance, resulting in § 87(2)(b) himself and PO Cacciatore falling to the ground. PO Thomas stated that he, his partner, and § 87(2)(b) all sustained abrasions from the fall but could not account for specific injuries suffered by § 87(2)(b) and did not see him bleed during the incident. PO Thomas denied ever touching § 87(2)(b)'s hair during the detainment (encl. Board Review 12). PO Cacciatore corroborated PO Thomas' account of the level of force used and the tactics employed and denied any knowledge of injuries sustained by § 87(2)(b) during the fall (encl. Board Review 13). Additionally, § 87(2)(b)'s medical records indicated that he did not have serious injuries or require medical treatment. § 87(2)(b) was discharged the same day with pain relief medication (encl. Board Review 14).

According to NYPD Patrol Guide Procedure 203-11, an officer at the scene of a police incident must "use minimum necessary force," to arrest an individual who is resisting (encl. Board Review 15).

§ 87(2)(g)

Allegation C – Discourtesy: At the 30th Precinct stationhouse, Sgt. Daniel Gagliardi spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Gagliardi told him to “get the fuck out of here” after learning that § 87(2)(b) was declining medical treatment unless he was brought to the Bronx Veterans Affairs hospital. Sgt. Gagliardi denied making this comment and denied being at the stationhouse while § 87(2)(b) was being held there. PO Cacciatore and PO Thomas denied hearing any officer make this remark. Sgt. Harrington, who was the desk sergeant at the time, had no recollection of the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 2

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date